

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77351551
LAW OFFICE ASSIGNED	LAW OFFICE 109
MARK SECTION (no change)	
ARGUMENT(S)	<p>Applicant respectfully responds to the Office Action dated December 1, 2008. For the reasons detailed below, Applicant respectfully requests reconsideration and withdrawal of the refusal of registration.</p> <p>In the Office Action dated December 1, 2008, the Examining Attorney noted that the previous amendments to the description of the goods and services were acceptable. The Examining Attorney also refused registration on the grounds that the specimens were inadequate because they were not deemed "acceptable to show trademark use." Applicant hereby responds as follows.</p> <p>Applicant notes that this application seeks registration of the subject mark (TRIPLE JJJ) in three classes as follows: Class 029 for beef, Class 031 for live animals, namely deer, and Class 044 for breeding and stud services for deer. With respect to Class 029, Applicant notes that the application is based on Applicant's intent to use and therefore no specimen of use is required. Accordingly, to the extent the refusal of registration is considered applicable to Applicant's application for registration in Class 029, Applicant requests reconsideration and withdrawal of the refusal.</p> <p>With respect to Class 044, Applicant previously submitted a specimen showing the use of the subject mark on Applicant's website. That specimen was submitted on September 18, 2008. Applicant respectfully submits that the specimen shows the use of the subject mark in connection with advertising for the services for which registration is sought; i.e., breeding and stud services for deer. Among other things, the web page specimen uses the subject mark in a prominent fashion and notes as follows:</p> <p style="padding-left: 40px;">"We also offer several other valuable services as well. If you need advice or information about the most innovative and effective breeding practices, we offer scientific breeding consultation. In addition, we can provide you with the latest and most groundbreaking methods for artificial insemination that yield repeated success. We provide this service at our ranch, so the housing of deer for procedures of this nature is available."</p> <p>Hence, to the extent that the Examining Attorney refused registration of the subject mark in Class 044, Applicant respectfully requests reconsideration and withdrawal of the refusal.</p> <p>Although Applicant disagrees with the Examining Attorney's conclusion that the specimen previously submitted for the sale of deer in Class 031 is inadequate to show trademark use, Applicant notes that it has now submitted a substitute specimen and declaration regarding the same. The substitute specimen is a photo of an ear tag that is affixed to an ear of one of Applicant's deer. As the</p>

accompanying declaration shows, such tags have been used by Applicant since at least as early as the filing date of the application. Applicant therefore requests reconsideration and withdrawal of the refusal of registration at it pertains to Class 031.

Applicant wishes to note that Applicant is also filing a Notice of Appeal in connection with this application.

For the reasons set forth above, Applicant respectfully requests reconsideration of the grounds for refusal of registration and withdrawal of same. Applicant respectfully requests allowance of the application by the Examining Attorney.

GOODS AND/OR SERVICES SECTION (029)(current)

INTERNATIONAL CLASS	029
DESCRIPTION	(Based on Intent to Use) beef
FILING BASIS	Section 1(a)
FILING BASIS	Section 1(b)

GOODS AND/OR SERVICES SECTION (029)(proposed)

INTERNATIONAL CLASS	029
DESCRIPTION	(Based on Intent to Use) beef
FILING BASIS	Section 1(b)

GOODS AND/OR SERVICES SECTION (031)(current)

INTERNATIONAL CLASS	031
DESCRIPTION	(Based on Use in Commerce) Live animals, namely, deer
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 07/27/2005
FIRST USE IN COMMERCE DATE	At least as early as 07/27/2005
FILING BASIS	Section 1(b)

GOODS AND/OR SERVICES SECTION (031)(proposed)

INTERNATIONAL CLASS	031
DESCRIPTION	(Based on Use in Commerce) Live animals, namely, deer
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/13/2007
FIRST USE IN COMMERCE DATE	At least as early as 12/13/2007
STATEMENT TYPE	"The substitute specimen(s) was in use in commerce at least as early as the filing date of the application."

SPECIMEN FILE NAME(S)	\\TICRS\EXPORT7\IMAGEOUT7\773\515\77351551 \xml1\RF R0002.JPG
SPECIMEN DESCRIPTION	scanned photograph of Applicant's product tag showing the mark as used on tags attached to the deer
GOODS AND/OR SERVICES SECTION (044)(current)	
INTERNATIONAL CLASS	044
DESCRIPTION	
(Based on Use in Commerce) Breeding and stud services for deer	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 07/27/2005
FIRST USE IN COMMERCE DATE	At least as early as 07/27/2005
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (044)(proposed)	
INTERNATIONAL CLASS	044
DESCRIPTION	
(Based on Use in Commerce) Breeding and stud services for deer	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 07/27/2005
FIRST USE IN COMMERCE DATE	At least as early as 07/27/2005
SIGNATURE SECTION	
SIGNATORY FILE NAME(S)	\\TICRS\EXPORT7\IMAGEOUT7\773\515\77351551 \xml1\RF R0003.JPG
SIGNATORY'S NAME	Chris McDaniel
SIGNATORY'S POSITION	Ranch Manager
RESPONSE SIGNATURE	/steveborgman/
SIGNATORY'S NAME	Steven R. Borgman
SIGNATORY'S POSITION	Attorney of record, Texas bar member
DATE SIGNED	06/01/2009
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	

SUBMIT DATE	Mon Jun 01 20:36:17 EDT 2009
TEAS STAMP	USPTO/RFR-205.169.24.2-20 090601203617492853-773515 51-4301a23d0b1216a888768c 0d8839460432-N/A-N/A-2009 0601194725695599

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **77351551** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Applicant respectfully responds to the Office Action dated December 1, 2008. For the reasons detailed below, Applicant respectfully requests reconsideration and withdrawal of the refusal of registration.

In the Office Action dated December 1, 2008, the Examining Attorney noted that the previous amendments to the description of the goods and services were acceptable. The Examining Attorney also refused registration on the grounds that the specimens were inadequate because they were not deemed "acceptable to show trademark use." Applicant hereby responds as follows.

Applicant notes that this application seeks registration of the subject mark (TRIPLE JJJ) in three classes as follows: Class 029 for beef, Class 031 for live animals, namely deer, and Class 044 for breeding and stud services for deer. With respect to Class 029, Applicant notes that the application is based on Applicant's intent to use and therefore no specimen of use is required. Accordingly, to the extent the refusal of registration is considered applicable to Applicant's application for registration in Class 029, Applicant requests reconsideration and withdrawal of the refusal.

With respect to Class 044, Applicant previously submitted a specimen showing the use of the subject mark on Applicant's website. That specimen was submitted on September 18, 2008. Applicant respectfully submits that the specimen shows the use of the subject mark in connection with advertising for the services for which registration is sought; i.e., breeding and stud services for deer. Among other things, the web page specimen uses the subject mark in a prominent fashion and notes as follows:

"We also offer several other valuable services as well. If you need advice or information about the most innovative and effective breeding practices, we offer scientific breeding consultation. In addition, we can provide you with the latest and most groundbreaking methods for artificial insemination that yield repeated success. We provide this service at our ranch, so the housing of deer for procedures of this nature is available."

Hence, to the extent that the Examining Attorney refused registration of the subject mark in Class 044, Applicant respectfully requests reconsideration and withdrawal of the refusal.

Although Applicant disagrees with the Examining Attorney's conclusion that the specimen previously submitted for the sale of deer in Class 031 is inadequate to show trademark use, Applicant

notes that it has now submitted a substitute specimen and declaration regarding the same. The substitute specimen is a photo of an ear tag that is affixed to an ear of one of Applicant's deer. As the accompanying declaration shows, such tags have been used by Applicant since at least as early as the filing date of the application. Applicant therefore requests reconsideration and withdrawal of the refusal of registration at it pertains to Class 031.

Applicant wishes to note that Applicant is also filing a Notice of Appeal in connection with this application.

For the reasons set forth above, Applicant respectfully requests reconsideration of the grounds for refusal of registration and withdrawal of same. Applicant respectfully requests allowance of the application by the Examining Attorney.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 029 for (Based on Intent to Use) beef

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

The applicant, or the applicant's related company or licensee, is using the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended, but has not provided the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services.

Proposed: Class 029 for (Based on Intent to Use) beef

Deleted Filing Basis: 1(a)

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 031 for (Based on Use in Commerce) Live animals, namely, deer

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 07/27/2005 and first used in commerce at least as early as 07/27/2005, and is now in use in such commerce.

Proposed: Class 031 for (Based on Use in Commerce) Live animals, namely, deer

Deleted Filing Basis: 1(b)

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at

least as early as 12/13/2007 and first used in commerce at least as early as 12/13/2007, and is now in use in such commerce.

Applicant hereby submits a new specimen for Class 031. The specimen(s) submitted consists of scanned photograph of Applicant's product tag showing the mark as used on tags attached to the deer.

For an application based on 1(a), Use in Commerce, "The substitute specimen(s) was in use in commerce as of the filing date of the application."

Specimen File1

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 044 for (Based on Use in Commerce) Breeding and stud services for deer

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 07/27/2005 and first used in commerce at least as early as 07/27/2005, and is now in use in such commerce.

Proposed: Class 044 for (Based on Use in Commerce) Breeding and stud services for deer

Deleted Filing Basis: 1(b)

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 07/27/2005 and first used in commerce at least as early as 07/27/2005, and is now in use in such commerce.

SIGNATURE(S)

Declaration Signature

Signature

Signatory's Name: Chris McDaniel

Signatory's Position: Ranch Manager

Request for Reconsideration Signature

Signature: /steveborgman/ Date: 06/01/2009

Signatory's Name: Steven R. Borgman

Signatory's Position: Attorney of record, Texas bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77351551

Internet Transmission Date: Mon Jun 01 20:36:17 EDT 2009

TEAS Stamp: USPTO/RFR-205.169.24.2-20090601203617492

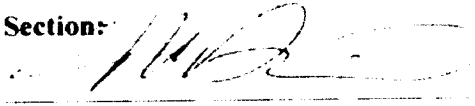
853-77351551-4301a23d0b1216a888768c0d883

9460432-N/A-N/A-20090601194725695599



Declaration Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34(a)(3)(i); and 2.34(a)(4)(ii); and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 2.44. If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date. 37 C.F.R. Secs. 2.34(a)(1)(i); and/or the applicant has exercised legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 2.44. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature Section:Signature: 

Signatory Name: Chris McDaniel

Signatory Position: Ranch Manager

Date Signed: 5/31/2009

NOTE TO APPLICANT: When filed as part of the electronic form (i.e., scanned and attached as an image file), the signature page **must** include both the signature information **and** the boilerplate declaration language. Do **not** include the entire application, but do ensure that the boilerplate declaration language actually appears; *a signature by itself will not be acceptable*. If, due to browser limitations, the boilerplate declaration language appears on a previous page when printed, you must "merge" the declaration and signature block onto a single page prior to signing, so that the *one complete page* can be scanned to create an acceptable image file. It is recommended that you copy-and-paste the entire text form into another document, manipulate the spacing there to move the declaration and signature section to a separate page, and then print this new version of the text form to send to the signatory.